

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 816 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANLAL JAGJIVANDAS

Versus

AJITRAY G SHASTRI

Appearance:

MR RAMESH K SHAH for Petitioner
NOTICE NOT RECD BACK for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR PC MASTER for MR HB SHAH for Respondent No. 4
GOVERNMENT PLEADER for Respondent No. 8

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 25/08/2000

ORAL JUDGEMENT

1. This appeal has been filed by the present

appellant who is a third party in the Civil Suit No. 1944 of 1974 decided by the learned Judge, City Civil Court, Ahmedabad whereby the learned Judge ordered that Shri Chaitanya Vrajlal Dudhia and Shri Rajesh Dhanandrarai Shastri be appointed as an additional trustees of the trust and further ordered that the trust property be vested in these additional trustees along with defendants nos.1, 2 and 5 as detailed in the judgement. In substance, the suit filed by the present respondents nos.1 and 2 for the order for appointment of two additional trustees and certain amendments to the scheme framed by the District Court, Ahmedabad in Civil Suit No. 2 of 1959 was decreed which is challenged in the present appeal.

2. The plaintiffs filed the suit in the following circumstances:

A scheme framed by the District Court, Ahmedabad in Civil Suit No. 2 of 1959, is the scheme under which the temple known as Karnmukteshwar Mahadev, Near Gomtipur Bridge, Outside Sarangpur Gate, Ahmedabad was being managed. There were two branches of pujaries and one trustee of each branch was appointed. They are described in the suit either as pujari trustees or as hereditary trustees. Defendant no.1 is the hereditary trustee or pujari trustee and he is working as such since 23/8/1960. Defendant no.2 belongs to other branch and he was also appointed as hereditary or pujari trustee with effect from the same branch. Another trustee was defendant no.3 who was appointed on 22/11/1966 and he worked up to 12/6/1972. Thereafter, from the same branch, defendant no.4 came to be appointed and he is working as a hereditary or pujari trustee from 18/6/1972. The scheme also provided for the appointment of a third trustee who was not from the branch of pujaries. One Ramanlal Kodarnath was appointed as third trustee and he was discharged on 4/8/1965. Thereafter, one Gumanbhai Manibhai Patel was appointed as third trustee on 16/12/1966 and he worked till he expired on 2/7/1971. Thereafter, defendant no.5 came to be appointed as a third trustee on 23/4/1972 and was working at the time of filing of the suit. So far as the scheme of the trust is concerned which is produced at Exh.90, under clause-12 of that scheme, the expenditure was required to be met from the profits and income of the trust. Clause-13 provides as to what is required to be done after meeting with the expenditure and it provides that out of the profits and income of the trust, after meeting with the required expenditure, whatever amount remains, 50% should be allocated to the reserved fund. The remaining amount of

50% was to be divided equally between the hereditary trustees who are pujari trustees. Thus, 25% of the surplus is to go to the first trustee and 25% of the surplus is to go to the second trustee. The third trustee is to receive nothing as he was not a pujari trustee. Now, it so happened that the pujari trustee overdraw the amount on a very last day. Ultimately, the matter came to the notice of the Charity Commissioner and the Joint Charity Commissioner had passed the order vide Exh.89 wherein it was found that a sum of Rs.1,36,922.91 ps. was overdrawn. Necessary orders were, therefore, passed in an enquiry, being Enquiry No. 10 of 1970. It appears that in spite of this enquiry, certain amounts were overdrawn and ultimately, an order was also passed for that amount also. It appears that in the proceedings which was going on under section-52 of the Bombay Public Trust Act, a compromise was arrived at vide Exh.83. By that compromise, the hereditary trustees and the third trustee agreed that two more trustees should be appointed. They also agreed to the names and have further agreed as to the manner in which the amounts which were overdrawn were required to be recouped and they provided a scheme by which the hereditary pujari trustees agreed to withdraw less amount than they may be entitle to and thus, in due course of time, the amounts which were overdrawn may be recouped. The plaintiffs, thereafter obtaining necessary permission of the Charity Commissioner filed the present suit to get two additional trustees appointed and further prayer is to get the scheme amended. The amendments which the plaintiffs have sought are for the purpose of appointing two more trustees and therefore, they seek to provide in the scheme 5 trustees instead of 3 trustees. They also desire that a provision may be made by which the hereditary or pujari trustees may not withdraw any amount more than 1/12 of 75% of the withdrawal of the previous year. This, according to the plaintiffs, is necessary in order to check the system by which in future there would not be more withdrawal as happened in the past. They also desire that there should be more control exercised by trustees who are not pujari trustees and therefore, they have suggested that the bank account should be operated by 3 trustees jointly of whom not more than one would be from pujari trustees. They have suggested certain amendments for the purpose of smooth running of the trust. In the old scheme, there is a clause by which the accounts are required to be submitted to the Court as well as to the Charity Commissioner.

There is also a clause by which the property cannot be transferred without the permission of the

Court. There is also a clause by which the amounts cannot be spent on renovation, etc., without the permission of the Court. It is submitted that now in view of the provisions contained in sections-25 and 36, permission of the Charity Commissioner is must and therefore, it is not necessary to have permission of the Court also. It is also suggested that under the provisions of the Bombay Public Trust Act, every year accounts are required to be submitted to the Charity Commissioner and it may not be now necessary to submit that also to the Court. Further, it is submitted that out of the reserved fund, there is a provision in the scheme that 20% must be spent on medical relief, education and for religious purpose. This also could be done by taking permission of the Court, but in practice, nothing has been done in regard to this. Now, it is sought to be provided that with the consent of 4 trustees, out of 5, this could be done. This would be, according to the plaintiffs, necessary for the smooth working of the trust and if this is provided with consent of 4 trustees, the trust will be able to spent this amount for useful purpose which hitherto have never been spent. Clause-15 of the scheme provides that if the expenses involved in more than Rs.1000/= are required to be incurred, permission of the court is necessary. This clause according to the plaintiffs is required to be removed for the purpose of smooth working of the trust. Detailed provisions are suggested for the purpose of holding meetings, requisition meetings, quorum, etc. Thus, the plaintiffs have filed the suit after seeking permission from the Charity Commissioner for the amendment of the Scheme and for the appointment of additional trustees.

3. Defendant no.1 filed written statement vide Exh.22 wherein it is stated that the amounts which were overdrawn were overdrawn by mistake and it is submitted that by the consent under the new scheme, defendant no.1 would be withdrawing less amount and as a result, the amount overdrawn would be recouped. It was further stated that the additional trustees should not be appointed by the Court, but it should be left to the Charity Commissioner who should appoint two additional trustees. Defendant no.1 has no objection to the appointment of two more trustees, but those trustees should be appointed by the Charity Commissioner. Defendants Nos. 2 to 4 vide their written statement at Exh.23 took up similar contentions as taken by defendant no.1. According to them, two additional trustees could be appointed by the Charity Commissioner. Defendant no.5 in his written statement has not taken up any

contentions. However, he has only stated that there is no irregularity of any kind in the management of the trust after he was appointed as trustee. He has further stated that necessary orders may be passed in the suit keeping in view the interest of the trust. In the written statement, Exh.12, filed by the Charity Commissioner, there also, no contentions are taken and it is only stated that consent to file the suit under section-50 of the Public Trust Act, is given by the Charity Commissioner on 13/12/1973. It is submitted that the Charity Commissioner will comply with the orders that may be passed in the suit and that the cost may be provided to him.

4. Issues were framed at Exh.75. It appears that at a later stage, none of the defendants pressed that the additional trustees should be appointed by the Charity Commissioner. It further appears that a public notice vide Exh. 39 was issued inter alia stating that there was a suit for the purpose of getting two more trustees appointed and for amendment of scheme framed in Civil Suit No.2 of 1959. Thus, objections, if any, were invited. In pursuance to the said public notice, the present appellant (third party) appeared and filed written statement, Exh.70, inter alia contending that there was no need to increase number of trustees. After the appointment of defendant no.5, the work of the trust has considerably improved. It was further contended that Shri Dudhiya and Shri Shastri could not be appointed as additional trustees as Shri Dudhiya was an Advocate and he would be good to fight litigation of the trust, but will not be an appropriate person to be appointed as trustee. As regards, Shri Shastri, it was contended that he was a nephew of plaintiff no.1 and as plaintiff no.1 was trying to take control over the trust and therefore, Shri Shashtri should not be appointed and it was suggested that plaintiff no.1 and his ancestors were only interested in the litigation. It was further contended that there should not be 5 trustees, but there should be only 4 trustees. According to the third party, two more trustees over the hereditary trustees will be an effective control over the administration of the Trust. The third party also submitted a list of three persons, and suggested that one or more trustees from that list may be appointed. The names suggested by the third party are as under :

- 1) Shri Shambhuprasad Maganlal Purohit
- 2) Shri Keshavprasad Motilal Jani
- 3) Shri Chhotubhai B. Bhatt

The third party also suggested that defendant no.5 may be appointed as managing trustee. Certain suggestions are made in regard to the manner of recouping the amount from the trustees who have overdrawn.

One Krishnakant Purshottambhai Bhatt, third party, also filed written statement at Exh.91, wherein it was suggested that a provision should be made in the scheme in such a manner that the hereditary or pujari trustees would not be able to have any control over the trust. He has suggested that Shri Shastri should be appointed as an additional trustee.

5. After considering the pleadings, provisions of the scheme and material on record, the learned Judge, as stated above, was pleased to appoint two additional trustees suggested by the plaintiffs and permitted to amend the scheme of the trust and ordered that the amended scheme shall be part of the judgement.

6. Before, I proceed to decide the appeal, I may mention that before the Trial Court the learned Advocate, Mr. R.K. Shah, appearing for the present appellant, has stated that the appellant will have no objection to the amendment of the scheme and he agreed in principle to the amendments which are suggested by the plaintiffs and defendant no.5. He had objections to only those clauses which provide for additional trustees and for consequential amendments which might arise because of the appointment of additional trustees. In substance, the dispute before the Trial Court was a limited dispute regarding the necessity of additional trustees. In the submission of third party, it is not necessary to appoint any more trustees and defendant no.5, being the third trustee, is sufficient to give check of hereditary trustee. In view of this contention, it is not necessary for me to decide the amendments of the scheme made by the learned Trial Judge. Even the question of appointment of two additional trustees has also now become mere academic. In view of the fact that more than 21 years have passed when the learned Trial Judge ordered for appointment of two additional trustees namely Shri Dudhiya and Shri Shastri and they have been performing their duties since then. The appellant, at the time of admission of this appeal, also filed an application, being Civil Application no.1607 of 1979 for stay of operation of the order passed by the learned City Civil Judge which is impugned in this appeal. This Court on 25th June, 1979 without granting any interim relief, merely issued rule and made it returnable on 2/7/1979 and

on 2/7/1979, discharged the rule. Thus, the order passed by the learned Trial Judge is wholly implemented and the present appeal has more or less become infructuous. It is because of this reason, the appellant as well as his learned Advocate, Mr. R.K. Shah, it appears have lost interest in the matter as they have not remained present on any dates when the appeal was listed for final hearing. Today also, when the appeal is called out they have also not remained present. Even on merits, the appellant has no case. Reading the judgement of the Trial Court, it is clear that the learned Judge decided the question of appointment of two additional trustees keeping in mind better management of the Trust. It is also clear that the parties, in fact, agreed before the learned Judge that provisions should be made in such a manner that the amounts overdrawn may be recouped and further provision should also be made in such a way that in future, there may not be any over-withdrawal. Considering the fact that in the past, hereditary pujari trustees have not remained faithful in the scheme and they overdraw the amount which they were entitled to withdraw after the expenditure which was necessary. It was, as a matter of fact, not a mistake, but, a deliberate act and the amounts overdrawn was very large. Considering this fact, the defendants agreed by Purshis, Exh.83, that two additional trustees should be appointed for which purpose the present suit was filed. In spite of the fact that the plaintiffs as well as the defendants who are pujari trustees have no objection for appointment of two additional trustees, surprisingly, the appellant, as a third party, raised an objection by contending that after the appointment of defendant no.5, the working of trust is going on smoothly and therefore, more trustees are not necessary. In the written statement, after stating that there was no need for the appointment of additional trustees, it was stated in the alternative that there should be 4 trustees and in the written statement, names of three persons were also given out of whom one or two should be appointed as trustees and they were to be appointed in addition to the existing three trustees. This would go to show that there was no objection to the addition of trustees and if 4 trustees are appointed and the names suggested by him are included as trustees. Apart from what is stated in the written statement at the time of argument, it is clearly submitted that no additional trustees are required to be appointed. Plaintiff no.1 in his evidence at Exh.76 stated that additional trustees from outside were necessary in order to develop the trust and in order to have a good check on pujaries who are hereditary trustees. Defendant no.1 in his evidence at Exh.79 also

stated that three additional trustees should be appointed looking to the work of the trust. One Krishnakant Purshottam Bhatt, an Advocate, who is an independent person, on behalf of the third party, at Exh.84 has also stated that it was necessary to have more trustees to have control over the hereditary trustees. In view of the evidence on record and in view of the fact that defendant nos. 1, 2 and 3 who are hereditary trustees and who have overdrawn the amount and having realised the situation that after the order of Joint Charity Commissioner have to pay the amount, they have agreed to certain formula by which the amount could be repaid and therefore, it is necessary that the said formula must work so that the amount could be recouped by the trust and therefore, they felt that additional trustees are necessary. Defendant no.5 who is an independent person and it is suggested by everyone that after he became trustee, the administration of the trust has improved and they also feel that additional trustees are necessary. In fact, defendant no.5 has stated that for the development of the trust, additional trustees are necessary. In this view of the matter, when it is a desire of the plaintiffs who are interested in the trust, the original hereditary pujaries trustees who are defendant nos.1 and 2 to 4 and the third trustee who is defendant no.5, that additional trustees are necessary who have enough experience about the trust. So called objection raised by the appellant as a third party, in my opinion, is not a valid objection and the same was raised just for the sake of pressing the same. Even according to the say of the appellant that administration of the trust is carried out in a better way after the appointment of defendant no.5 and therefore, additional trustees are not necessary and especially, when defendant no.5 himself feels that his hands must be more strengthened by appointment of more trustees, it is difficult to understand the objection of the appellant. The learned Trial Judge has observed that new additional trustees are not to get any remuneration as defendant no.5 is also not getting out of the trust property.

7. In view of this, in my opinion, the appointment of new trustees is not a burden on the trust. On the contrary they would be able to help defendant no.5 who is trying to do his best for the improvement of the administration of the trust. Therefore, I am of the opinion that it is necessary to include two additional trustees. In view of this, in my opinion, the learned Trial Judge was justified in passing the order for appointment of two additional trustees.

8. The names of Shri Dudhiya and Shri Shastri as suggested by the plaintiffs and by the learned Judge also, does not call for any interference in view of the fact that both the persons are highly educated. Shri Shastri is a Professor, a social worker and firm believer of Karnamukteshwar Mahadev as their choice God. Similarly, Shri Dudhiya is an Advocate and also a social worker and is the Secretary of the Lawyers' Credit Society for many years. Apart from that, defendant no.5 has clearly stated that he is willing to work with these two additional trustees. There remains hardly anything to be decided regarding the eligibility of these additional trustees. As against this, for the names suggested by the appellant, nothing has been stated about their eligibility.

9. In view of the above discussion, I see no merits in this appeal, suffice it so say that I am in total agreement with the reasoning of the learned Trial Judge. There being no substance in this appeal, this appeal is hereby dismissed with costs. Considering the facts and circumstances of the case, parties shall bear their own costs. However, the costs of the Charity Commissioner shall be borne by the appellant.

(K. R. Vyas, J.)
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